

2011 State Damage Prevention Program Grants Progress Report
Funding Opportunity Number: DTPH56-11-SN-0001
CFDA Number: 20.720

Award Number: *DTPH56-11-G-PHPS19*

Project Title: *NM Pipeline Safety Bureau State Damage Prevention*

Date Submitted: *September 30, 2011*

Submitted by: *Jason N. Montoya, Bureau Chief*

Specific Objective(s) of the Agreement

Under this grant agreement, the NMPSB will:

- *Develop and implement methods for effective communication;*
- *Foster, support and partner with stakeholders;*
- *Support a Damage Prevention Education Program for industry stakeholders;*
- *Support Public Awareness and Stakeholder Education;*
- *Resolve disputes to define State authority's role; and Laws and regulations of the damage prevention process; and*
- *Review the Effectiveness of Damage Prevention Programs*

Workscope

Under the terms of this grant agreement, the Grantee will address the following elements listed in 49 USC§60134 through the action it has specified in its Application.

- *Element (1): Participation by operators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communication between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.*
- *Element (2): A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.*
- *Element (4): Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have to partnered to design and implement training for the employees of operators, excavators, and locators.*
- *Element (5): A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.*
- *Element (6): A process for resolving dispute that defines the State authority's role as a partner and facilitator to resolve issues.*
- *Element (7): Enforcement of State damage prevention laws and regulations for all aspects of damage prevention process, including public education, and use of civil penalties for violations assessable by appropriate State authority.*
- *Element (8): A Process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications,*

- underground pipeline locating capability, and gathering analyzing information about the accuracy and effectiveness of locating programs”.*
- *Element (9): A process for review and analysis of effectiveness of each program element, including means for implementing improvements identified by such program review.*

Accomplishments for this period (Item 1 under Article IX, Section 9.01 Progress Report: “A comparison of actual accomplishments to the objectives established for the period.”)

ELEMENT 1 - EFFECTIVE COMMUNICATIONS

"Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate."

Under the State Excavation Law, it is mandatory that all owners/operators of underground facilities be members of the local one-call center. There is only one one-call center in New Mexico, New Mexico One-Call, Inc. All excavators must call/fax or e-mail the one call center to request locates at least 2 working days (48 hours) before excavating. The one call center is accessible 24/7 and all locate requests require positive response. New Mexico One-Call must, in turn, issue a locate request to each underground facility owner/operator registered in the area of the proposed excavation, and the underground facility owner/operator must mark the location of its underground facilities in the proposed excavation area within 48 hours of the One-Call center receiving the locate request from the excavator. Facility owners provide mapping data to the one call center. Underground facility owners (UFOs) are encouraged to respond to locate requests promptly, and the excavator notifies the facility owner directly or thru the one call center if an underground facility is not marked. Excavators causing damage to underground facilities must notify the one-call center, facility owner and/or call 911. The PSB conducts on-site visits of excavation occurring throughout the state to ensure compliance with the law and provides literature and assistance if excavators or facility owners need clarification about different aspects of the law. The excavation law does not define non-regulated gathering lines as underground facilities and operators of those facilities are exempt from the requirement to be a member of the one-call. The law does not exempt any other underground facility owner other than those exempted by operation of law (e.g., Native American operators operating on Native American lands).

ELEMENT 2 - COMPREHENSIVE STAKEHOLDER SUPPORT

"A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program."

New Mexico One Call and the Pipeline Safety Bureau (PSB) have taken the lead in improving the state's damage prevention program. All underground facility owners, except for operators of non-regulated gathering lines and those exempted by operation of law (e.g., Native American operators operating on Native American lands) are required to be members of the one call center. The one-call center board of directors is composed of representatives of all stakeholders. An example of a process used to foster partnership in damage prevention

is the New Mexico Regional Common Ground Alliance (NMRCGA). The PSB, New Mexico Gas Association, and New Mexico chapter of the National Utility Contractor's Association are the NMRCGA founding organizations. Regular meetings are held to address local concerns and best practices. The NMRCGA receives financial and support from the PSB and conducts an annual "excavation damage prevention expo" where excavators, facility owners, local governments, and other stakeholders participate as sponsors, participants, and presenters to exchange information regarding damage prevention. The PSB conducts onsite "tail-gate" training and education at no charge for all parties, including contractors, underground facility owners, and local government entities involved in excavation. New Mexico One-Call conducts extensive training in a classroom setting in communities throughout New Mexico. This program is intended to educate equipment operators, field personnel, the general public, and office/administrative personnel on the requirements of the law and on best practices. A test is given at the end of the one-day session and a certificate is issued to those that successfully pass the quiz.

ELEMENT 3 - OPERATOR INTERNAL PERFORMANCE MEASUREMENT

"A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs."

This is a work in progress. Since 2010 we began reviewing pipeline operator's damage prevention programs to see if they have quality assurance programs in place, the performance measures used to ensure compliance, and that corrective action is taken when needed. The PSB conducts on-site inspection of records, and operation and maintenance procedures to ensure adequate procedures are in place for locating and marking underground facilities. That review also includes a review of documentation to show that operator damage investigations considered applicable causes and contributing factors. A new electronic damage prevention violation tracking system is being implemented which, over time, will allow examination of hit, near-miss, and other damage prevention practices to identify problem areas. This will allow preventive measures and education to be designed for identified problem areas. The tracking system applies to all underground facility owners.

ELEMENT 4 - EFFECTIVE EMPLOYEE TRAINING

"Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators."

A training program for underground facility operators, locators and excavators has been developed and several classes are conducted throughout the state each year by New Mexico One Call. PSB damage prevention personnel serve as instructors for some of the classes. We have also contracted with New Mexico One Call to publish and print training materials in both English and Spanish, and a contract with New Mexico Underground Contractors association to provide field training on the excavation law. Additional training is also provided by the Pipeline Safety Bureau for excavators and underground facility owners.

PSB personnel have been conducting onsite "tail-gate" training and education at no charge for all parties, including contractors, underground facility owners, and local government entities involved in excavation. This project will permit PSB personnel to continue training and instruction to excavators and underground facility owners.

ELEMENT 5 - PUBLIC EDUCATION

"A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities."

We have an ongoing public education program to promote use of the 811 number and to educate the public on the requirement to call the one call center before excavating. The PSB provides education materials, training, and participation with stakeholders to ensure education and damage prevention activities are consistent with federal and state laws.

ELEMENT 6 - DISPUTE RESOLUTION

"A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues."

The Commission encourages underground facility owners/operators and excavators to negotiate and settle disputes arising from damage to underground facilities. If the parties are unable to resolve such disputes the underground facility owners or operators, or excavators may request mediation or arbitration from the Commission through its Pipeline Safety Bureau (PSB). State Law provides for Alternative Dispute Resolution (18.60.5.19 NMAC), Mediation of Excavation Damage Disputes (18.60.5.20 NMAC), and Binding Arbitration of Excavation Damage Disputes (18.60.5.21). The Public Regulation Commission, through its Consumer Complaint Division, also accepts complaints from any stakeholder and the general public, and forwards them to the PSB. The PSB must formally address the complaint and resolve it. Resolution of a complaint can range anywhere from a simple clarification of the law requirements to an investigation that results in a civil penalty.

ELEMENT 7 - ENFORCEMENT

"Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority."

State Law 18.60.5.1 NMAC thru 18.60.5.22 NMAC and 62-14-2 NMSA thru 62-14-8 NMSA gives the Commission enforcement authority over excavators, one call centers and underground facility operators. The Commission can assess administrative penalties of up to \$5,000.00 for a first offense and up to \$25,000.00 for subsequent violations. The PSB investigates all damages (damages must be reported) and can initiate on-site citations for violations of the State Excavation Law. The Commission has promulgated rules to allow for an expedited "dispositional" administrative process, in front of a hearing officer or panel, provided the alleged violator agrees to abide by the hearing officer's or panel's decision. Based on the information provided by the PSB and the alleged violator, the hearing officer or panel makes a finding (which could include, mandatory training, or a recommended civil penalty).

ELEMENT 8 - TECHNOLOGY

"A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs."

The Pipeline safety Bureau has contracted with New Mexico One Call to provide a direct link to the New Mexico Damage Information Reporting Tool database from the Common Ground Alliance web site and web access to the field. This will allow us to upgrade existing electronic forms to be used for reporting instances of third party damage, track trends, and generate reports that will be used to evaluate the effectiveness of our excavation damage prevention program. The data generated will be used to evaluate the effectiveness of our, training program, One call Law, excavator and facility operator compliance. The data will also be used to identify and document any needed program improvements.

Quantifiable Metrics/Measures of Effectiveness (Item 2 under Article IX, Section 9.01 Project Report: "Where the output of the project can be quantified, a computation of the cost per unit of output.")

The New Mexico Pipeline Safety Bureau has brought more than 60 excavation damage enforcement actions. Enforcement actions resulted in 32 mandatory training classes where over 300 excavation and underground facility operator personnel were required to attend training on the State excavation law, and \$16,555.00 in civil penalties assessed.

In the future PSB staff will be tracking excavation damages per every 1000 one call tickets, this will give staff understand of where more attention is needed.

Issues, Problems or Challenges (Item 3 under Article IX, Section 9.01 Project Report: "The reasons for slippage if established objectives were not met. ")

New Mexico Pipeline Safety Bureau is on schedule, but we are anticipating a heavier work load in the upcoming year.

Mid-term Financial Status Report

The mid-term financial report has been sent as a separate attachment to the AA.

Plans for Next Period (Remainder of Grant)

PSB plans to remain a key player with all stakeholder, and at this time no changes are recommended to the workscope.

Requests of the AOTR and/or PHMSA

No action requested at this time.